

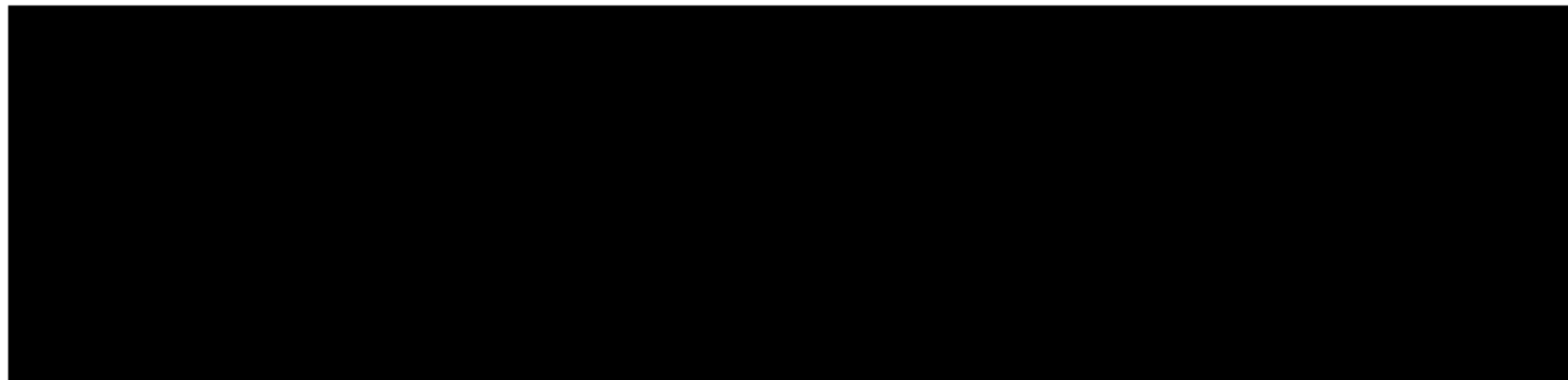
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



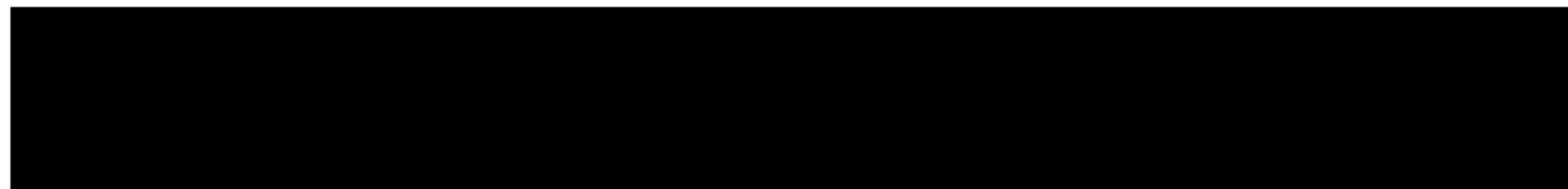
B5

DATE: DEC 21 2011

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner filed the Form I-140 petition on September 3, 2008. The director initially denied the petition on June 17, 2009. The petitioner filed an appeal on July 20, 2009, requesting an additional 60 days to gather additional evidence. More than a year elapsed with no further submission from the petitioner, and the AAO summarily dismissed the appeal on September 7, 2010, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(1)(v).

In its dismissal notice, the AAO informed the petitioner that, if it wished to file a motion to reopen or reconsider, "[a]ll motions must be submitted to the office that originally decided [the] case." The instructions to Form I-290B, Notice of Appeal or Motion, state: "Do **not** send your appeal or motion directly to the Administrative Appeals Office (AAO)" (emphasis in original).

Any motion to reconsider an action by USCIS filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). If USCIS served the decision by mail, the petitioner must properly file the motion within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form (including where an application or petition should be filed). *See* 8 C.F.R. §§ 103.2(a)(1).

On October 8, 2010, the AAO received the petitioner's motion to reconsider. The petitioner had submitted the motion directly to the AAO despite specific instructions not to do so. The AAO returned the motion, which the petitioner later refiled with the Texas Service Center on October 25, 2010. The petitioner did not file the motion according to the instructions (including where to file the motion) until 48 days after the decision for which the petitioner sought reconsideration. Accordingly, the petitioner did not properly file a timely motion.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Because the motion was untimely filed, the AAO must dismiss the motion.

Furthermore, a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In this instance, the petitioner, on motion, does not establish that the AAO's summary dismissal was based on an incorrect application of law or USCIS policy. The petitioner does not address the summary dismissal at all. Instead, the petitioner argues the merits of the underlying petition. The opportunity for

the petitioner to do so was on appeal. At that time, the petitioner presented no arguments or evidence, instead falsely claiming that such evidence was forthcoming at a later date.

The petitioner also submits documentation, including job announcements (dated after the petition's denial date) and evidence of the beneficiary's academic credentials. The petitioner neither claims nor proves that the petitioner had timely submitted these materials in support of the appeal in 2009.

The petitioner asserts that its "efforts will go to obtain a Certified Labor Certification." In the present proceeding, the petitioner had sought an exemption from the labor certification process under section 203(b)(2)(A) of the Act. If the petitioner were to apply for a labor certification at this late date, that application would have no effect on the outcome of the petition the petitioner filed in 2008. The priority date of a petition that includes an approved labor certification is the date that the petitioner applied for the labor certification. *See* 8 C.F.R. § 204.5(d). Therefore, if the petitioner were to apply for a labor certification in 2010 or later, that labor certification, even if approved, could not be part of a petition filed in 2008. Rather, the petitioner would have to file a new Form I-140 petition, including the approved and currently valid labor certification.

Because the petitioner did not show that the summary dismissal was the result of an error of law or fact, the AAO will dismiss the motion.

ORDER: The motion is dismissed.